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United States Government Accountability Office
Washington, DC 20548

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October 15, 2004

The Honorable Thad Cochran
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable Charles W. Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: Mandatory
Country of Origin Labeling of Fish and Shellfish*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture (USDA), Agricultural Marketing Service, entitled "Mandatory Country of Origin Labeling of Fish and Shellfish" (RIN: 0581-AC26). We received the rule on October 5, 2004. It was published in the Federal Register as an "interim final rule with request for comments" on October 5, 2004. 69 Fed. Reg. 59708.

The interim final rule requires retailers to notify their customers of the country of origin of covered commodities. The rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers for fish and shellfish covered commodities.

Enclosed is our assessment of the USDA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the USDA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Lawrence J. Dyckman,

Director, Food Safety/Agriculture Issues. Mr. Dyckman can be reached at (202) 512-9692.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: A. J. Yates
Administrator, Agricultural
Marketing Service
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
"MANDATORY COUNTRY OF ORIGIN LABELING
OF FISH AND SHELLFISH"
(RIN: 0581-AC26)

(i) Cost-benefit analysis

The USDA estimates the first-year incremental costs for fish and shellfish harvesters, producers, processors, wholesalers, and retailers will be \$89 million. According to the USDA, maintenance costs beyond the first year are expected to be lower than the combined start-up and maintenance costs required in the first year. The estimated costs to the U.S. economy in higher food prices and reduced food production in the 10th year after implementation of the rule is \$6.2 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The USDA prepared a Final Regulatory Flexibility Analysis, which complies with the requirements of the Act including the number and size of the small entities and the alternatives considered and the steps taken to reduce the burden. Since the labeling is statutorily mandated, USDA states that it had little regulatory flexibility. However, the length of time that records are required to be kept is reduced by the interim final rule. Also, the number of products that require labeling is reduced because the definition of "processed food item" has been broadened.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The interim final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. The USDA published a Notice of Proposed Rulemaking in the Federal Register on October 30, 2003. 68 Fed. Reg. 61944. In response, USDA received over

5,600 comments, which are discussed in the preamble to the final rule. In addition, USDA is accepting comments until January 3, 2005, on the interim final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The interim final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The USDA estimates the total recordkeeping cost for all participants in the supply chain for covered fish and shellfish commodities at \$44.6 million for the first year, with subsequent maintenance costs of \$24.4 million.

Statutory authorization for the rule

The interim final rule is promulgated under the authority found in the Agricultural Marketing Act of 1946 as amended by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) and the Fiscal Year 2004 Consolidated Appropriations Act (Pub. L. 108-199).

Executive Order No. 12866

The interim final rule was reviewed by OMB and found to be an “economically significant” regulatory action. Even though the estimated annual effect on the economy is estimated to be less than \$100 million, USDA believes the interim final rule would adversely affect in a material way a sector of the economy. Therefore, it has been determined to be a “major rule” under the Congressional Review Act.

Executive Order No. 13132 (Federalism)

The USDA has found that, while the statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of state law. Therefore, USDA believes that state programs that encompass the commodities, which are covered by the interim final rule, are preempted. The USDA consulted with states during the formulation of the rule.